IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 544 OF 2005

1. Liladhar L. Thakkar & Anr. .. Appellants

Vs.

1. The Municipal Corporation of Gr. Bombay and anr. .. Respondents

Mr. L.K. Tripathi for Appellants.
Ms. Geeta Joglekar for Respondent No.1.

CORAM: B.H. MARLAPALLE, J.

Date : July 13, 2005.

P.C.:

1. Heard Mr. Tripathi the learned counsel for the appellants.

2. The appellants have challenged the order dated 11/4/2005 passed by the learned Judge of the City Civil Court at Mumbai dismissing the Notice of Motion No.3911 of 2001 filed in L.C. Suit No.4768 of 2001.

3. Notice dated 25/7/2001 under Section 354 of the Mumbai Municipal Corporation Act, 1888 was issued

and it was received by the plaintiffs on 1/8/2001. Instead of complying with the said notice, the plaintiffs chose to challenge the same in L.C. Suit No.4768 of 2001 and Notice of Motion No.3911 of 2001 was taken out for interim injunction restraining the Corporation from acting on the impugned notice. Initially, ad-interim stay was granted in favour of the plaintiffs but by the impugned order the Notice of Motion has been dismissed by taking into consideration the affidavit in reply filed by the Municipal Corporation.

4. The trial court noted in the impugned order that the suit building i.e. Kailash Darshan, which was earlier called as Pathai Bapa Building is in a dilapidated condition and it is likely to collapse at any time. These observations were based on the affidavit in reply filed by the Junior Engineer from T-Ward of the respondent-Corporation and there was no material placed by the plaintiffs on record to counter his affidavit. From the said affidavit it is clear that though on the basis of the inspection carried on 15/2/2000 the Deputy Chief Engineer of the Corporation

had informed that the decayed wooden members on the building requires immediate replacement and other tenantable repairs like replacement of decayed wooden railing stair-case, planks, balcony members etc. are to be done to building and work was required to be carried out under the supervision of Structural Engineer, based on this report notice dated 5/5/2000 was issued to the owner of the building i.e. Shri Jamnadas D. Thakker. The landlord did nothing and he was prosecuted under Section 471 of MMC Act in Case No.7808/ME of 1999. On 3/2/2001 the Corporation received a representation stating that on account of the earth quake that occurred on 26/1/2001, the suit building have developed new cracks and turned into highly dangerous and risky building for human habitation. The matter was, therefore, referred to the Executive Engineer (Special) Zone VI, who opined that the developer should be allowed to carry out reconstruction, if he desired. On 14/6/2001 Deputy Municipal Commissioner, Zone VI visited the suit site and found that the building was very old and is in dilapidated condition and not fit for human habitation. The Structural Engineer M/s. Paras

Consultants also opined that the building was not fit for human habitation and all these reports were placed before the Additional Municipal Commissioner, who ordered to issue a notice under Section 354 of the MMC Act and thus the impugned notice was issued.

5. It is, therefore, clear that on the basis of tangible material available, the Additional Municipal Commissioner has directed action under Section 354 of the MMC Act and it is also noticed that all the tenants in the building, except the plaintiff no.1, have already vacated their tenaments in the suit building and plaintiff no.2 is not residing in the suit building. The view taken by the trial court in dismissing the Notice of Motion, therefore, does not call for any interference and this appeal must fail at the threshold.

6. The appeal is dismissed in limine. Ad-interim order stands vacated. Oral application for stay is rejected.

(B.H. Marlapalle,J.)